

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

-PS-O-

2007 JUL 13 PM 2:26

JAMES GAMBLE,

U.S. DISTRICT COURT
W.D.N.Y. - BUFFALO

Plaintiff,

-v-

DECISION and ORDER
06-CV-0718S

SISTERS OF CHARITY HOSPITAL,

Defendant.

On November 1, 2006, the Court granted plaintiff's application for service of the summons and complaint by the U.S. Marshals Service and directed the Marshals Service to serve the summons and complaint on defendant. (Docket No. 3). Plaintiff was then forwarded a blank summons and a Marshal Process Receipt and Return Form (USM-285) to complete in order to obtain service by the Marshals Service, and on November 8, 2006, a summons was issued. On May 23, 2007, the Court issued an order directing plaintiff to show cause why the complaint should not be dismissed for his failure to effect service pursuant to Fed.R.Civ.P. 4(m). (Docket No. 5).

By letter dated June 10, 2007, plaintiff advised the Court that in November 2006 he paid the requisite \$8.00 fee to the Marshals Service for service of the summons and complaint and assumed that he had done everything necessary to effect service of the summons and complaint but that upon his recent inquiry to the Marshals Service he was

advised that the defendant had not acknowledged service by mail or responded in any way to the service attempted by the Marshals Service.¹

The Court finds that plaintiff, who is proceeding *pro se*, has shown cause why this action should not be dismissed and that pursuant to Fed.R.Civ.P. 4(m), he is granted an additional 90 days to serve the summons and complaint on the defendant.

Upon receipt of a copy of this order, plaintiff is required to again submit a copy of this Order, marshal forms, summons and complaint to the U.S. Marshal for service upon named defendants. Plaintiff shall again pay the fee of \$8.00, which must be paid by money order or certified check.²

Pursuant to Fed.R.Civ.P. 4(c)(2), the U.S. Marshal is hereby directed to collect their fee and serve the summons and complaint upon the named defendant. **The Marshals Service must serve the summons and complaint forthwith and advise the Court in writing of the status of service no later than September 1, 2007.**

Plaintiff is reminded that while the U.S. Marshals Service will make every effort to serve the summons and complaint, it is his obligation to be aware of the service deadline set forth herein, and if service has not been accomplished by that date, he may wish to

¹In this District, the Marshals Service utilizes New York Civil Practice Law and Rules § 312-a's Personal Service by Mail provisions. See Fed.R.Civ.P. 4(h)(1). Section 312-a provides that a plaintiff may serve the summons and complaint by first class mail and must include a statement of service by mail and an acknowledgment of service by mail. The defendant must sign and return to the sender the acknowledgment of service within 30-days of receipt and service is not "complete" until the signed acknowledgment is mailed or delivered to the sender. Defendant then has 20 days from the date he mailed or delivered the signed acknowledgment of service to answer the complaint. If the defendant does not return a signed acknowledgment service is not complete and he may be subject to paying plaintiff's costs of subsequent personal service.

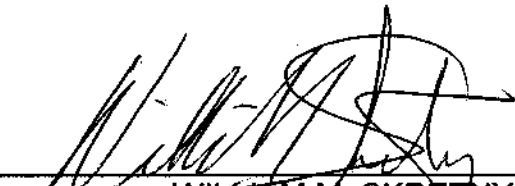
²Once defendant appears in this action plaintiff may, if appropriate, move for recovery of his service costs. See N.Y. C.P.L.R., § 312-a(2)(d).

contact the Marshals Service at (716) 551-4851 to inquire about the status of service and move for an extension of time to serve the summons and complaint, if necessary.

SO ORDERED.

Dated:

7/12, 2007
Buffalo, New York



WILLIAM M. SKRETNY
United States District Judge